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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,913	06/24/2003	Roger E. McPherson	222884	2146

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT PAPER NUMBER

3644

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/602,913

Applicant(s)

MCPHERSON ET AL.

Examiner

Yvonne R. Abbott

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-42 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 32-35, 37-40 and 42 is/are rejected.
7) ☒ Claim(s) 36 and 41 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/24/03.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because in the 1st sentence, the phrase "is disclosed" should be omitted. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 32, 33, 37 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Yoder et al. (5,970,916). Yoder et al. disclose a clumping animal litter material in the form of particles comprising a compacted mixture of a cellulosic liquid-

absorbent substrate which may be prepared from corn cob or grains, wherein the cellulosic particles are applied with anti-microbial agents including ammonium salts, wherein the particles may be further treated with an agent such as tapioca starch; and wherein the final particles will have a moisture level of about 5-10% by weight; and wherein fragrance may be applied to mask odor. With respect to claim 37, Yoder et al. disclose that it is well known that animal litters are used in containers, cages or litter boxes to collect animals' urine and feces, wherein coherent clumps of used litter material is removed from the containers.

5. Claims 32, 33, 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Trinh et al. (6,287,550). Trinh et al. disclose an animal care system and litter comprising a liquid-absorbing material which may include plant pulp, and cereal or grain hull obtained from sources such as corn, rice, wheat, oats and the like; wherein the cellulosic material may be admixed with a carbohydrate binder such as corn starch, and wherein it is well known to use polysaccharides to increase the clumping ability of the cellulosic material; wherein anti-microbials or odor (urease) inhibitors including ionic salts including alkali metal carbonates; and wherein perfume is additionally added to mask odors.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 35, 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoder et al. Yoder et al. disclose that the final particles will have a moisture level of about 5-10% by weight. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide that the moisture content is about 5-25%, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. A prima facie case of obviousness typically exists when the ranges of a claimed composition overlap the ranges disclosed in the prior art. E.g., *In re Geisler*, 116 F.3d 1465, 1469, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997); *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (CCPA 1976); *In re Malagari*, 499 F.2d 1297, 1303, 182 USPQ 549, 553 (CCPA 1974). Such is the case here. The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages. See In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980) ("[D]iscovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art." See, e.g., *In re Baird*, 16 F.3d 380, 29 USPQ2d 1550 (Fed. Cir. 1994); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). *In re Peterson* Appeal No. 02-1189 (Fed. Cir. January 8, 2003). With respect to claim 42, that the grains are dried by a distiller is considered to be well known since by-products of various plant, grain, and other natural

product processing are commonly used to manufacture the absorbent substrates of litter materials. As to claims 34 and 39, Yoder et al. also disclose an example of agglomerated cellulosic granules formed by using calcium carbonate (col. 3, lines 15-28) prior to the clumping treatment, since the use of calcium carbonate is well known to increase the rate of sorption of liquid such as urine.

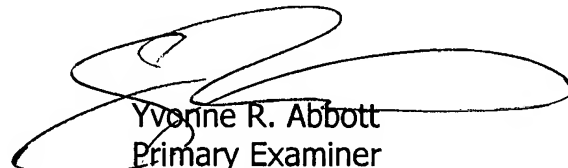
Allowable Subject Matter

8. Claims 36 and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-2866. The examiner can normally be reached on 7:30-5:00 flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on (703)306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
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